

**MINUTES OF THE COURT OF APPEAL  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

**July 28, 1998**

## DIVISION ONE

B112208 Rhee, et al. (Not for Publication)

V.

Department of Industrial Relations

The judgment is affirmed. The Department is awarded its costs of appeal.

Vogel (Miriam A.), J.

We concur: Ortega, Acting P.J.

Masterson, J.

B115304      Borstein Enterprises, et al.      (Not for Publication)

V.

# Farmers and Merchants Bank of Long Beach

The orders sustaining the demurrer without leave to amend, dismissing this action, and awarding attorneys' fees are reversed, and the cause is remanded to the trial court with directions to enter new orders overruling FMB's demurrer, specifying the time within which FMB must answer the complaint, and setting the case for trial. Borstein is entitled to its costs of this appeal, including attorneys' fees, but recovery thereof is deferred until a final judgment is ultimately entered, at which time these costs shall be considered and appropriately allocated by the trial court.

Vogel (Miriam A.), J.

We concur: Ortega, Acting P.J.

Masterson, J.

DIVISION ONE (Continued)

B105645      Village Properties      (Not for Publication)

v.

Santa Monica Mountains Conservancy, et al.

The orders summarily adjudicating liability, the judgment, and all post-verdict orders are reversed, and the cause is remanded to the trial court with directions (1) to determine whether Village Properties should be permitted to amend its complaint (Part I.B., *ante*), (2) to make such other orders as are necessary, and (3) to set a date for trial. The parties are to pay their own costs of appeal.

Vogel (Miriam A.), J.

We concur:    Spencer, P.J.

Ortega, J.

B117104      People      (Not for Publication)

v.

Right

The judgment is affirmed.

Vogel (Miriam A.), J.

We concur:    Spencer, P.J.

Ortega, J.

B119055      Kurban      (Not for Publication)

v.

Los Angeles Unified School District

The judgment is affirmed. The District is awarded its costs of appeal.

Vogel (Miriam A.), J.

We concur:    Spencer, P.J.

Dunn, J. (Assigned)

DIVISION ONE (Continued)

B121419      Nguyen, et al.      (Not for Publication)  
v.  
Superior Court of Los Angeles County  
Kramer

Let a peremptory writ of mandate issue, commanding the trial court to vacate its order of April 21, 1998. Our stay order is vacated forthwith, and the trial court is directed to set this matter for trial. The parties are to pay their own costs of these writ proceedings.

Vogel (Miriam A.), J.

We concur:    Spencer, P.J.  
                 Masterson, J.

B120188      Horwich      (Certified for Publication)  
v.  
Superior Court, Los Angeles County  
(Acuna, et al., r.p.i.)

The petition is denied. The Acunas are awarded their costs of these writ proceedings.

Vogel (Miriam A.), J.

We concur:    Spencer, P.J.  
                 Masterson, J.

B114207      Cecil Saydah Company, Inc., et al.      (Not for Publication)  
v.  
Pacific Rim Assurance Company

The judgment is reversed as to plaintiffs' breach of contract cause of action and the summary adjudication of plaintiffs' negligence cause of action. In all other respects, it is affirmed. The order denying the motion to tax costs also is affirmed. The parties are to bear their own costs on appeal.

Spencer, P.J.

I concur:      Dunn, J. (Assigned)  
I concur in the judgment only:    Vogel (Miriam A.), J.

## DIVISION ONE (Continued)

B117538 People v. Garcia (Not for Publication)

The judgment is affirmed.

Masterson, J.

We concur: Ortega, Acting P.J.  
Vogel (Miriam A.), J.

B119775      Los Angeles Cellular Telephone Co.      (Certified for Publication)  
v.  
Superior Court, Los Angeles County  
(Spielholz, r.p.i.)

Let a peremptory writ of mandate issue compelling the trial court to vacate its order denying L.A. Cellular's motion for summary adjudication of its affirmative defense (limitation of liability) to Spielholz's negligence claims (simple negligence and negligent infliction of emotional distress) and to enter a new order adjudicating the validity of L.A. Cellular's limitation of liability vis-à-vis those two causes of action, thereby limiting L.A. Cellular's maximum liability to \$5,000 in the event it is found liable for negligence or gross negligence. The parties are to pay their own costs of these writ proceedings.

Vogel (Miriam A.), J.

We concur: Ortega, Acting P.J.  
Masterson, J.

July 28, 1998-Continued

## DIVISION ONE (Continued)

B118237      People                        (Not for Publication)  
v.  
Woods

The judgment is affirmed.

Masterson, J.

We concur: Spencer, P.J.  
Vogel (Miriam A.), J.

DIVISION TWO

B117557      People                                  (Not for Publication)  
v.  
Ruben M. Ortiz

The Court:

The judgment is affirmed.

Boren, P.J., Nott, J., Zebrowski, J.

B110304      People                                  (Not for Publication)  
v.  
James Earl Pierce

The Court:

The judgment is affirmed.

Boren, P.J., Nott, J., Zebrowski, J.

July 28, 1998-Continued

DIVISION THREE

B110070 People (Not for Publication)  
v.  
Martin

The judgment is affirmed.

Kitching, J.

We concur: Klein, P.J.  
Croskey, J.

B106337 County of Los Angeles, Dept. of Health Services (Not for  
Publication)  
v.  
Civil Service Commission of the County of Los Angeles  
James Hughes

The judgment is affirmed. Costs on appeal to real party in interest, Hughes.

Kitching, J.

We concur:   Croskey, Acting P.J.  
                    Goodman, J. (Assigned)

DIVISION FOUR

B116302 People (Not for Publication)  
v.  
Shibata

The Court:

For the foregoing reasons, the judgment is modified to award appellant a total of 350 days precommitment credit, comprised of 234 days actual custody credit and 116 days conduct credit, and as modified is affirmed. The trial court is directed to prepare and forward to the Department of Corrections an amended abstract of judgment consistent with this opinion.

Vogel (C.S.), P.J., Epstein, J., Hastings, J.

July 28, 1998-Continued

## DIVISION FOUR (Continued)

B108551      People                                  (Not for Publication)  
v.  
Phillips, Jr.

The judgment is affirmed.

Epstein, J.

We concur: Vogel (C.S.), P.J.  
Hastings, J.

B110349 People (Not for Publication)  
v.  
Travion C.

The judgment is affirmed.

Epstein, J.

We concur: Vogel (C.S.), P.J.  
Hastings, J.

B110629 People (Not for Publication)  
v.  
Renteria

The judgment is affirmed.

Vogel (C.S.), P.J.

We concur: Epstein, J.  
Hastings, J.

DIVISION FIVE

B121403      Kavis K., Sr.      (Not for Publication)  
v.  
Los Angeles Superior Court  
L.A. County Dept. of Children and Family Services

The petition for a writ of mandate is denied on the merits.

Godoy Perez, J.

We concur:   Turner, P.J.  
                      Grignon, J.

B114657      People                                  (Not for Publication)  
v.  
Roy Carl Smith, Jr.

The abstract of judgment is modified to reflect 638 days actual custody credit for a total of 704 days presentence custody credit, and as modified, is affirmed.

Godoy Perez, J.

We concur:   Turner, P.J.  
                      Grignon, J.

(Not for Publication)

B118358      Los Angeles County Department of Children and Family Services  
v.  
Isais V.  
In re Michael V. et al.

The order denying the petition is affirmed.

Godoy Perez, J.

We concur:   Turner, P.J.  
                      Grignon, J.



July 28, 1998-Continued

## DIVISION FIVE (Continued)

[illegible]

The judgment is affirmed.

Godoy Perez, J.

We concur: Grignon, Acting P.J.  
Armstrong, J.

B122038      Los Angeles County, D.C.S.      (Not for Publication)  
v.  
Los Angeles Superior Court  
In re Christopher G. et al.

The petition for a writ of mandate is denied.

Turner, P.J.

We concur: Grignon, J.  
Godoy Perez, J.

[illegible]

The judgment is modified in one respect only. Defendant is to receive an additional restitution fine in the sum of \$200 pursuant to Penal Code section 1202.45 which may only be collected if he violates a condition of parole. The abstract of judgment is to reflect the imposition of this additional restitution fine. The clerk of Superior Court is ordered to prepare an amended abstract of judgment and forward it to the Department of Corrections. In all other respects, the judgment is affirmed.

Turner, P.J.

We concur: Grignon, J.  
Armstrong, J.

DIVISION FIVE (Continued)

B116363 Elizabeth Valdez (Not for Publication)

v.  
The Vons Corporation, Inc.

The judgment is reversed. Plaintiff, Elizabeth Valdez, individually and as special administrator is to recover her costs on appeal from defendant, The Vons Corporation.

Turner, P.J.

We concur: Armstrong, J.  
Godoy Perez, J.

B111626 People (Certified for Partial Publication)

v.  
Victor Leon Trotter

The judgment is modified as follows. The conviction for escape from custody is reversed and dismissed. The judgment is modified to reflect that defendant was convicted of violation of Penal Code section 12021, subdivision (a), rather than section 12021.1. The matter is remanded to allow the trial court to exercise its discretion to resentence on counts 1, 2 and 3 in light of the reversal and dismissal of count 4. After sentencing modifications have been made, an amended abstract of judgment shall be forwarded to the Department of Corrections. In all other respects, the judgment is affirmed.

Turner, P.J.

We concur: Armstrong, J.  
Godoy Perez, J.

July 28, 1998-Continued

## DIVISION FIVE (Continued)

B117411 People (Not for Publication)  
v.  
Terrence F.

Appellant's maximum term of confinement is ordered corrected to a total of five years. The trial court's orders are affirmed in all other respects.

Armstrong, J.

We concur: Grignon, Acting P.J.  
Godoy Perez, J.

B109259 People  
v.  
Charles Arthur Knox

Filed order modifying opinion. (Change in judgment.)

B108920      David Mejia Devis et al.      (Certified for Partial Publication)  
v.  
Bank of America N.T. & S.A. et al.

The judgment in favor of McKinney is affirmed, as is the judgment in favor of the Bank. Respondents to recover costs on appeal.

Armstrong, J.

We concur: Turner, P.J.  
Godoy Perez, J.

July 28, 1998-Continued

## DIVISION FIVE (Continued)

B120244      People      (Not for Publication)

V.

Jose Guadalupe Santibanez

The appeal is dismiss.

Turner, P.J.

We concur: Grignon, J.  
Godoy Perez, J.

## DIVISION SEVEN

B117412 People (Not for Publication)

V.

William L.

The order under review is affirmed.

Lillie, P.J.

We concur:   Johnson, J.  
                      Neal, J.

B116662 People (Not for Publication)

V.

David M.

The maximum theoretical period of confinement is modified to ten years four months, less 60 days of credit for predisposition confinement. As modified, the order under review is affirmed.

Johnson, Acting P.J.

We concur: Woods, J.  
Neal, J.